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JOSE A. PRADO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

JOSE A. PRADO,

Plaintiff,

v.

FEDERAL EXPRESS CORPORATION,

Defendant.

Case No. CV12-03945 PSG

SECOND AMENDED COMPLAINT

1. Failure to Accommodate Disability in Violation of the ADA (42 U.S.C. §12111)
2. Disability Discrimination in Violation of the ADA (42 U.S.C. §12112)
3. National Origin Discrimination in Violation of Title VII of the Civil Rights Act (42 U.S.C. §2000e-2(a)(1)
4. Failure to Accommodate in Violation of FEHA (Cal. Gov. Code §12940(m)
5. Failure to Engage in the Interactive Process in Violation of FEHA (Cal. Gov. Code §12940(n))
6. Disability Discrimination in Violation of FEHA (Cal. Gov. Code §12940(a) & (j))
7. National Origin Discrimination in Violation of FEHA (Cal. Gov. Code §12940(a) & (j))
8. Failure to Prevent Discrimination in Violation of FEHA (Cal. Gov. Code §12940(k))
9. Discrimination in Violation of Public Policy

Original Complaint Filed: July 26, 2012
Trial Date: March 17, 2014

PRADO Jose Prado ("PRADO" or "PLAINTIFF") hereby alleges as follows:

PARTIES:

1. Plaintiff Jose Prado is an individual that was employed by Defendant Federal Express Corporation ("DEFENDANT") at all relevant times prior to the unlawful discharge at issue in this complaint. PRADO is, and was at all relevant times, a resident of California and this Federal judicial district.

2. Defendant Federal Express Corporation is a Delaware Corporation, headquartered in Memphis Tennessee, and with offices throughout California including within this district.

JURISDICTION AND VENUE:

3. The Federal District Court for the Northern District of California has Federal Subject Matter jurisdiction over this complaint pursuant to 28 U.S.C. §1331 and 42 U.S.C. §12101 et seq.

4. This Court has Supplemental Jurisdiction over the California law claims pursuant to 28 U.S.C. §1367.

5. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(2) in that a substantial part of the events and/or omission on which the claims herein are based occurred in this Court's district.

GENERAL ALLEGATIONS

6. On or about September 1997, PRADO began working at DEFENDANT's facilities through a temp agency. On or about December 1997, PRADO was officially hired by DEFENDANT, as a Part-Time Handler, through the efforts of Samuel Chin, DEFENDANT's Operational Manager.

7. On or about May 2000 PRADO suffered a right knee injury; while working at DEFENDANT. Mr PRADO was sent to get a truck ASAP and the pavement was uneven and in disrepair and was told to hurry.

8. While recovering from his right knee surgery, on or about November 2000

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PRADO was out on a Medical Leave of Absence for right knee surgery.

9. On or about January 2001 PRADO suffered his first stroke; PRADO was in a coma for about a month in the Intensive Care Unit of San Jose Hospital. PRADO's physicians gave him a slim chance at survival. In total, PRADO was hospitalized for approximately three months. PRADO's coworkers and managers frequently visited him. Ramona McMaster, DEFENDANT's Manager, was kept informed of PRADO's condition. PRADO's first medical leave of absence was for approximately a year.

10. On or about November 2001 PRADO returned to work, reporting to his manager, Samuel Chin. Understanding PRADO's condition Mr. Chin had PRADO doing light duty tasks such as: scanning documents. On or about December 2001 another. DEFENDANT's Manager, David Correira, pulled PRADO off of doing light duty and sent PRADO to download freight containers. The practice, pattern of DEFENDANT's Management assigning PRADO to do light duty tasks only to revert back to assigning PRADO to do non-light duty tasks began here and continued to the day

11. For approximately 8 years PRADO performed the essential functions of his position – sometimes with and sometimes without reasonable accommodation – struggling when he was not provided accommodation. DEFENDANT's Management recognized PRADO's job performance on 2 separate occasions. The first Bravo Zulu Award was given on or about June 1999 and the second Bravo Zulu Award was given on or about March 2008. On or about July 2009 Ms. McMaster told PRADO directly that "Ruben Maynes (RHV Sr. Manager) is satisfied with your job performance."

12. From what PRADO experienced and witnessed: PRADO was discriminated against. In particular, the average work day for Part-Time Handlers was 2-3 hours however, the Handlers' hours depend on the volume of freight coming in and going out of the station. Some Handlers, just as PRADO routinely received "extra hours" prior to his first leave. Prior to his first leave of absence, PRADO routinely worked 6 days a week. PRADO was used as a "runner", sent to "work" at Cisco Systems and a driver's "helper". As a result, PRADO

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routinely worked 8-10 hour shifts and continued to be classified as a Part-Time Handler. As a Part-Time Handler it was not mandatory to accept these "additional" hours. DEFENDANT Management made the decision which Handler would be given the opportunity to make more money working extra hours. Beginning on or about November 2001 DEFENDANT Management no longer offered PRADO this financial opportunity as a result of his illness.

13. PRADO had a forklift certificate from another company. PRADO was not allowed to obtain a forklift certificate for working at DEFENDANT's facility despite repeated requests for this certificate. After PRADO returned from his first Medical Leave he continued to drive the forklift, without certification and incident, and DEFENDANT Management allowed it.

14. On or about 2005 Paul Nadeau, DEFENDANT's Manager, banned PRADO from using the forklift. On or about July 2006 Mr. Nadeau suspended PRADO for driving the forklift. PRADO explained how he was ordered to move the supply freight by Delfin Hernandez, SJC Coordinator. PRADO explained he was only following management's orders. PRADO also reminded Mr. Nadeau how he had been requesting his forklift certification; but, DEFENDANT Management won't allow it. Mr. Nadeau responded: "The reason you don't get the forklift certification is because I don't want it." On or about July 2006 PRADO reported this incident to Angela Suazo, SJC Sr. Manager.

15. Throughout this time period DEFENDANT's Management would order PRADO to work faster despite PRADO reminding management of his disability and limitations. PRADO repeatedly requested light duty. PRADO was made to suffer, work in a hostile and unsafe work environment and his health and safety were jeopardized. These incidents of adverse employment actions are both substantial and detrimental.

16. Because of his medical condition, PRADO would occasionally be injured.. Because PRADO has limited feeling on his left side there would be times that PRADO did not know he was injured; until, his coworkers would be complaining to a DEFENDANT Manager, such as Steve Evans, "There's blood on the boxes and packages." Steve Evans and

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other DEFENDANT Managers did not care. PRADO was told: “Go get a band-aid and go back to work.”

17. On or about July 2007 Steve Evans pushed PRADO to work faster. PRADO walked out of the container and told Mr. Evans: “You're harassing me because you know I am disabled and the left side of my body doesn't work good.”

18. On or about late November 2005 PRADO was on his way to download boxes. DEFENDANT Managers, Cathy Doyle and Ryan Grace, were in the freight containers area. Ryan commented about PRADO's disability to Cathy. Cathy replied: “He is pretending to be disabled.”

19. On or about March 27, 2007, PRADO attended a Handlers' meeting at approximately 8:45AM. The DEFENDANT’s Managers present during the meeting were: Angela Suazo, Paul Nadeau and Ryan Grace. They confirmed what Lavinsky and other coworkers had been telling PRADO for a long time. During the meeting, Angela Suazo (SJC Sr. Manager) stated: “We have been trying to fire him [PRADO] but it's been hard to get rid of him.”

20. On or about October 2007 PRADO reported to Craig Vanderberg, Sr. HR Rep., how he was being systematically harassed by DEFENDANT Management, how DEFENDANT Management had created a hostile environment to try to make PRADO quit. PRADO explained to Mr. Vanderberg that this situation started after he became disabled. Approximately two weeks later Mr. Evans apologized but no other actions were taken.

21. Many times Delfin Hernandez, SJC Coordinator, would comment how PRADO's “physical disabilities do not exist.” Mr. Hernandez would also have PRADO walk back and forth in front of him and then comment: “I do not see anything wrong with you.” Then on or about April 2008 Mr. Hernandez told PRADO: “I get mad when you explain you're disabled. I don't see any disability. You are normal.” PRADO reported Mr. Hernandez to the DEFENDANT Manager, Olga DeHaro.

22. On or about April 2008 the security guard at the SJC Station suggested to

PRADO that he bring in a doctor's note to help enforce his rights to a reasonable accommodation.

23. On or about, May 29, 2008, PRADO formally requested reasonable accommodation. The written request stated that he could not perform “lifting and, carrying” and that he needed light duty. He noted in this request that needed “Light Duty. I did light duty job before Ron Abad sent me to down load freight from the containers.”

24. On or about May 2008 PRADO took in the doctor's note stating: “Jose Prado has been under my care for HBP, stroke with left side weakness. Light work. No lifting, carrying.” PRADO gave the doctor's note to his manager, Olga DeHaro. Ms. DeHaro made a copy of the note and return the original to PRADO. Ms. DeHaro informed PRADO: “It's good for only one day” despite there being no such limitation by the doctor.

25. On or about May 2008 PRADO faxed the accommodation form to Ms. McMaster. PRADO again re-faxed the accommodation form two more times. Ms. McMaster called PRADO to inform him she received “the same fax three times.” Ms. McMaster also advised PRADO to “look out for a job you can perform in the station and let me know.”

26. On or about June 2008 PRADO's physician faxed the Physical Capacities Form to PRADO's employer. On or about June 2008 PRADO contacted Ms. McMaster to request the scanning position. Ms. McMaster explained to PRADO how she would call the SJC Managers and let them know about his “new accommodation job”; but, PRADO continued to be assigned non light duty tasks which included heavy lifting. PRADO repeatedly contacted Ms. McMaster and requested her help. Ms. McMaster ignored PRADO.

27. On or about October 2008 Lupe informed PRADO that Ron Abad hadn't told her what PRADO was supposed to do that day, but she stated that she did not think Abad wanted PRADO to do scanning. Also, on or about October 2008 PRADO went to do recycles and the front counter supplies. While doing this job, Olga DeHaro told PRADO to replace Gilbert Acosta and do scanning. PRADO was only allowed to do scanning for approximately 7 minutes then Ms. DeHaro replaced PRADO and sent him back to do recycles which required

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heavy lifting.

28. PRADO was harassed by Delfin Hernandez, Station Coodinator, of Cuban decent. For example, since at least April 2008, Delfin Hernandez, has inquired about PRADO's immigration status on various occasion without justification. However, similarly situated employees not of PRADO's protected category, Nicaraguan origin, have not been subject to the same or similar treatment by Delfin Hernandez.

29. On or about November 2008 PRADO was downloading freight and inquired about his job accommodation. Ms. DeHaro then falsely claimed PRADO had never turned it in. PRADO informed Ms. DeHaro that he had faxed the same form to Ms. McMaster three times. PRADO further explained to Ms. DeHaro how he had spoken to Ms. McMaster over the phone and she had assured him that she would be talking to management to have PRADO do scanning.

30. On or about December 2008 PRADO was injured. PRADO cut his left hand; while downloading boxes. PRADO showed his bleeding hand to Ruben Anaya, SJC Sr. Manager. Mr. Anaya told PRADO: "Put a band-aid on it." Later that day PRADO was pulling supply boxes away with one of the carts. Delfin Hernandez called PRADO to walk straight at him without any support. PRADO did as he was instructed. Mr. Hernandez then told PRADO: "I see you as perfect. I don't see anything wrong with your walking. You walk better than before."

31. On or about December 2008 PRADO contacted Ms. McMaster and forwarded a copy of the doctor's note. PRADO told her he was returned to the position to download freight from the cans. This position was assigned to PRADO by the DEFENDANT Manager, Ron Abad. PRADO reminded Ms. McMaster how this was not a light duty position and it is not what PRADO's physician recommended. PRADO also asked Ms. McMaster if this was another attempt at a "constructive discharge." Ms. McMaster ignored PRADO. Ms. McMaster openly disregard both the law and company policy with respect to PRADO.

32. On or about January 8, 2009, PRADO filed his initial complaint with the EEOC.

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On or about May 1, 2012, PRADO received NOTICE-OF-RIGHT-TO-SUE dated April 26, 2012.

33. On or about January or February 2009 PRADO and other DEFENDANT employees were notified that the SJC Station was going to be closed and they were going to be transferred to other stations. PRADO was transferred to the RHV Station.

34. Finally, on or about March 2009 PRADO was presented a Job Offer with Accommodation ("CONTRACT"). The CONTRACT stated that :

> The Human Capital Management Program Committee has reviewed your case and you have been approved for reasonable accommodation for the position of Part Time Handler in the RHV station at 710 Dado Street in San Jose, CA. The job accommodations are as follows: due to your lifting/push/pull restrictions of 20 lbs and limitation on use of your left hand for grasping and manipulation, you will be assigned scanning documents and boxes on the AM sort.

35. PRADO accepted this accommodation by signing and marking next to the blank which stated "I accept this position and its terms as outlined in this offer letter" and started working scanning documents and boxes on the AM sort subject to the 20 pound weight limit.

36. Despite this, Ruben Maynes, RHV Sr. Manager, assigned PRADO to do such non light duty tasks as: recycles and belt split. PRADO was only allowed to do scanning on 4 separate occasions and for only a short period of time. This occurred on April 8, 9, 23 and 24. PRADO was not provided with training for use of the ROADS GUN – a training that would have aided PRADO with light-duty scanning work. A coworker by the name of Lorna Hernandez was allowed routinely to do the scanning. Ms. Hernandez has less seniority than PRADO and did not have a light-duty restriction.

37. As a result, DEFENDANT breached the terms and conditions of the CONTRACT. For example, after agreeing to the CONTRACT, PRADO was routinely assigned to do such non light duty tasks as: downloading freight, belt split, recycling, pull freight from the belt and stacking freight, palletized freight and organizing the supplies. These tasks exceeded the 20 pound weight limit and were not the tasks which the

accommodation required (scanning).

38. On most occasions, PRADO needed to use his left hand to assist him in these non-light duty tasks. When organizing the supplies PRADO would be required to use the pallet jack. PRADO used only his right side to push/pull the pallet jack. PRADO pushed/pulled pallets of supplies having a maximum weight of approximately 2,000 pounds or about 1,000 kilograms.

39. On or about May 2009 PRADO notified Ms. McMaster that the Job Offer with Accommodation had been breached. PRADO was made to work without reasonable accommodation and in particular PRADO was lifting a dangerous amount of weight. Ms. McMaster ignored PRADO.

40. On or about June 18, 2009, PRADO worked his scheduled shift; without reasonable accommodation. PRADO was assigned to split the belt, sorted documents and recycles. Defendant was aware how many of the packages exceeded PRADO's lifting/push/pull restrictions of 20 pounds. PRADO was routinely assigned to do these tasks. All during his shift he felt ill but PRADO performed his assigned duties. Thereafter, PRADO suffered his Second Stroke.

41. The Second Stroke and massive physical and mental damages caused thereby was a direct consequence of DEFENDANT's violation of the accommodation CONTRACT. In particular, PRADO's lifting – at DEFENDANT's command – of packages of greater than 20 pounds and his requirement of carrying out non-scanning duties caused the damages to PRADO.

42. On or about July 17, 2009, PRADO's doctor provided an estimate of when PRADO would be released to return to work. On or about October 16, 2009, was the estimated return to work date. Pursuant to company policy PRADO could have had the Defendant extend PRADO's Medical Leave and still retain his same "accommodated position". This right was not afforded to PRADO.

43. PRADO was released to return to work on October 15, 2009. PRADO faxed Ms.

McMaster the doctor's note. Ms. McMaster was to fax PRADO's doctor the Physical Capacities Form. But, Ms. McMaster claimed to have "forgotten" to do this prior to taking her own leave.

44. On or about October 26, 2009, PRADO had not hear anything regarding his return to work. As a result, PRADO contacted Ms. McMaster and this is the first he learned Ms. McMaster was claiming to have forgotten to fax the form.

45. The form Ms. McMaster sent to PRADO's doctor suggested that PRADO was working an 8 hour day which was not true.

46. On or about January 19, 2010, PRADO met with Craig Vanderberg Mr. Vanderberg confirmed that although substantial harmed by the stroke PRADO could still adequately perform the functions described in the CONTRACT.

47. Despite this, on or about February 2010 PRADO received a letter from Jennifer Ramos on behalf of DEFENDANT. This letter informed PRADO that his accommodation request was being denied.

48. On or about March 2010 PRADO sent a letter to DEFENDANT requesting reconsideration. The only response PRADO received was his termination letter dated April 19, 2010.

49. On or about May 20, 2010, PRADO filed his second complaint with the EEOC. On or about May 1, 2012, PRADO received NOTICE-OF-RIGHT-TO-SUE dated April 26, 2012.

CLAIMS

FIRST Cause of Action

Failure to Accommodate Disability in Violation of ADA

50. PRADO incorporates each paragraph above as if fully set forth herein.

51. Pursuant to 42 U.S.C. §12111, an employer is required to reasonably accommodate the physical disabilities of an employee.

52. DEFENDANT failed to reasonably accommodate PRADO's disabilities, as

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described above in this Complaint by delaying or refusing to accommodate, by failing to adhere to its accommodation and by failure to accommodate for rehire or permit PRADO to return to work after his second stroke.

53. DEFENDANT's acts and omissions described above constitute a failure to reasonably accommodate PRADO's disabilities in violation of 42 U.S.C. § 12101 et. seq.

54. The conduct of DEFENDANT as alleged herein was unlawful, deliberate, malicious, despicable, and oppressive, and was done in order to injure and damage PRADO. DEFENDANT consciously disregarded the rights of PRADO to be free from disability discrimination. To the extent that the conduct was engaged in by employees or agents of DEFENDANT, DEFENDANT authorized or ratified the conduct or was itself guilty of oppression or malice. The conduct was perpetrated by, or done with the knowledge and consent of, a managing agent of DEFENDANT.

55. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

SECOND Cause of Action

Disability Discrimination in Violation of the ADA

56. PRADO incorporates each above paragraph as if fully set forth herein.

57. Pursuant to 42 U.S.C. §12112, it is an unlawful employment practice for an employer to discriminate, discharge or harass a person from employment because of a disability, or perceived disability.

58. Defendant's acts and omissions as described above, including the failure to accommodate and/or rehire, and harassment violated 42 U.S.C. §12112.

59. The conduct of DEFENDANT as alleged herein was unlawful, deliberate, malicious, despicable, and oppressive, and was done in order to injure and damage PRADO. DEFENDANT consciously disregarded the rights of PRADO to be free from disability discrimination. To the extent that such conduct was engaged in by employees or agents of DEFENDANT, DEFENDANT authorized or ratified the conduct or was itself guilty of

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oppression or malice. The conduct was perpetrated by, or done with the knowledge and consent of, a managing agent of DEFENDANT.

60. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

THIRD Cause of Action

National Origin Discrimination in Violation of Title VII of Civil Rights Act

61. PRADO incorporates the above paragraphs as if fully set forth herein.

62. Defendants engaged in the practice of unlawful practice of national origin discrimination in violation of §703(a) of Title VII, 42 U.S.C. §2000e-2(a)(1) by discriminating against PRADO by subjecting him to harassment because of his national origin, Nicaragua.

63. The effect of the actions complained above in paragraph 28 has been to deprive PRADO of equal employment opportunities and otherwise adversely affect his status as an employee because of his national origin.

64. The unlawful employment practice complained of herein was intentional.

65. The unlawful employment practice complained of herein was done with malice or with reckless indifference to the federally protect rights of PRADO.

66. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

FOURTH Cause of Action

Failure to Accommodate Disability in Violation of FEHA

67. PRADO incorporates the above paragraphs as if fully set forth herein.

68. Pursuant to California Gov. Code §12940(m) it is an unlawful employment practice for an employer to fail to reasonably accommodate the known physical disability of an employee.

69. PRADO was qualified to carry out light-duty tasks and indeed, DEFENDANT agreed to make this accommodation limiting PRADO's tasks to scanning packages and

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limiting his lifting to no more than 20 pounds.

70. PRADO was able to carry out the essential functions of this accommodation, or could have easily been trained to carry out the essential function of the position as detailed in the CONTRACT if given this agreed upon reasonable accommodation, and if given training on new scanning equipment as necessary for this reasonable accommodation.

71. DEFENDANT failed to reasonably accommodate the disabilities of PRADO. Instead, it subjected PRADO to a dangerous working conditions of doing non-scanning work and heavy lifting which caused PRADO's second stroke and with it massive brain and other physiological damages.

72. DEFENDANT failed to accommodate PRADO by permitting PRADO to continue to work as a scanner after his second stroke.

73. DEFENDANT's acts and omissions described above constitute a failure to reasonably accommodate the disabilities of PRADO in violation of California Gov. Code §l2940 et seq.

74. The conduct of DEFENDANT as alleged herein was unlawful, deliberate, malicious, despicable, and oppressive, and was done in order to injure and damage PRADO. DEFENDANT's consciously disregarded the rights of PRADO to be free from disability discrimination. To the extent that conduct was engaged in by employees or agents of DEFENDANT, they authorized or ratified the conduct or were themselves guilty of oppression or malice. The conduct was perpetrated by, or done with the knowledge and consent of, a managing agent of DEFENDANT.

75. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

FIFTH Cause of Action

Failure to Engage in the Interactive Process in violation of FEHA

76. PRADO incorporate the above paragraphs as if fully set forth herein.

77. Under California Gov. Code§ 12940(n), it is an unlawful employment practice for

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an employer to fail to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known disability.

78. DEFENDANT failed to engage in this mandated interactive process in good faith with PRADO in response to PRADO's myriad requests by first failing for many months to meet and enter into any reasonable accommodation and then once the reasonable accommodation was agreed to, refusing to respond to PRADO's complaints that it was not being carried out. DEFENDANT also failed to engage in the interactive process after PRADO attempted to return to work after his second stroke.

79. Instead, DEFENDANT either ignored PRADO's complaints, issued accommodations that it did not adhere to, and eventually terminated (and/or failed to continue accommodating) PRADO.

80. DEFENDANT's acts and omissions as described above violated Gov. Code §12940(n).

81. The conduct of DEFENDANT as alleged herein was unlawful, deliberate, malicious, despicable, and oppressive, and was done in order to injure and damage PRADO. DEFENDANT consciously disregarded the rights of PRADO to be free from disability discrimination. To the extent that extent that the conduct was engaged in by employees or agents of DEFENDANT, they authorized or ratified this conduct or were themselves guilty of oppression or malice. The conduct was perpetrated by, or done with the knowledge and consent of, a managing agent of DEFENDANT.

82. WHEREFORE, PRADO and prays for relief against DEFENDANT as set forth below.

SIXTH Cause of Action

Disability Discrimination in Violation of FEHA

83. PRADO incorporates the above paragraphs as if fully set forth herein.

84. Pursuant to California Gov. Code § 12940(a), it is an unlawful employment

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practice for an employer to discharge a person from employment or other discriminate because of an actual or perceived disability.

85. Pursuant to California Gov. Code § 12940(j) it is an unlawful employment practice for an employer to harass an employee because of an actual or perceived disability.

86. Defendant's acts and omissions as described above, including the termination of the employment of PRADO and other actions described violates California Gov. Code §12940(a) and (j).

87. The conduct of DEFENDANT as alleged herein was unlawful, deliberate, malicious, despicable, and oppressive, and was done in order to injure and damage PRADO. DEFENDANT consciously disregarded the rights of PRADO to be free from disability discrimination. To the extent that the conduct was engaged in by employees or agents of DEFENDANT, DEFENDANT authorized or ratified that conduct or was itself guilty of oppression or malice. The conduct was perpetrated by, or done with the knowledge and consent of, a managing agent of DEFENDANT.

88. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

SEVENTH Cause of Action

National Origin Discrimination in Violation of FEHA

89. PRADO incorporates the above paragraphs as if fully set forth herein.

90. Pursuant to California Gov. Code § 12940(a), it is an unlawful employment practice for an employer to harass an employee or otherwise discriminate against him because of his national origin.

91. Pursuant to California Gov. Code § 12940(j) it is an unlawful employment practice for an employer to harass an employee because of his or her national origin.

92. Defendant's acts and omissions as described above, including the harassing treatment of PRADO and other actions described violates California Gov. Code §12940(a) and (j).

93. The conduct of DEFENDANT as alleged herein was unlawful, deliberate, malicious, despicable, and oppressive, and was done in order to injure and damage PRADO. DEFENDANT consciously disregarded the rights of PRADO to be free from national origin discrimination. To the extent that the conduct was engaged in by employees or agents of DEFENDANT, DEFENDANT authorized or ratified that conduct or was itself guilty of oppression or malice. The conduct was perpetrated by, or done with the knowledge and consent of, a managing agent of DEFENDANT.

94. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

EIGHTH Cause of Action

Failure to Prevent Discrimination in Violation of FEHA

95. PRADO incorporates the above paragraphs as if fully set forth herein.

96. DEFENDANT failed to take all reasonable steps necessary to prevent discrimination against PRADO from occurring, in violation of the California Fair Employment and Housing Act, Cal. Gov. Code §12940(k).

97. PRADO filed a timely administrative complaint for DEFENDANT's failure to prevent unlawful discrimination against him. The DFEH issued PRADO a right to sue letter within one year before the filing of this lawsuit. PRADO's EEOC/DFEH charge and right to sue letter previously mentioned in this complaint also encompass DEFENDANT's failure to prevent discrimination against him.

98. As a result of DEFENDANT'S discriminatory actions against him, Plaintiff has suffered and continues to suffer damages, in the form of lost wages and other employment benefits, and emotional and physical distress, the exact amount of which will be proven at trial.

99. Defendant acted for the purpose of causing Plaintiff to suffer financial loss and emotional distress and physical distress and is guilty of oppression and malice, justifying an award of exemplary and punitive damages.

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100. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

NINTH Cause of Action

Discrimination in Violation of Public Policy

101. PRADO incorporates the above paragraphs as if fully set forth herein.

102. DEFENDANT discriminated against PRADO on the basis of his disability, failed to accommodate his disability, denied Plaintiff a good faith interactive process and failed to prevent discrimination all in violation of public policy.

103. This discrimination, failure to accommodate, denial of a good faith interactive process and failure to prevent discrimination are all prohibited by statute and/or common law..

104. As a result of DEFENDANT's discriminatory actions against him, PRADO has suffered and continues to suffer damages, in the form of lost wages and other employment benefits, and emotional and physical distress, physical and mental harm the exact amount of which will be proven at trial. Defendant acted for the purpose of causing Plaintiff to suffer financial loss and emotional distress and physical distress an and is guilty of oppression and malice, justifying an award of exemplary and punitive damages.

105. WHEREFORE, PRADO prays for relief against DEFENDANT as set forth below.

PRAYER

WHEREFORE, PRADO prays for judgment against DEFENDANT as follows:

a. For loss of earnings and other employment benefits in an amount according to proof;

b. For emotional distress, and mental and physical pain in an amount according to proof;

c. For brain and physiological damage as a result of the second stroke;

d. For impaired life and mental activity as a result of the second stroke;

e. For all physical, financial mental and other damages as a result of the second stroke;

f. For impaired earning capacity as a result of the second stroke;

g. For impaired life enjoyment as a result of the second stroke;

h. For assessment of exemplary and punitive damages;

i. For reasonable attorneys' fees and costs pursuant to Cal. Govt. Code§ 1295 42 U.S.C. § 12205, or as otherwise allowed by law;

j. For interest at the legal rate according to proof;

k. For costs of suit incurred herein; and

l. Such other and further relief as the court may deem proper.

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, there is no such interest to report.

DEMAND FOR JURY TRIAL

PRADO hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: September 30, 2013

MALLISON & MARTINEZ

By: /s/ Hector R. Martinez
HECTOR R. MARTINEZ
Attorney for PLAINTIFF
JOSE A. PRADO

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